970.

SUPREME COURT OF THE UNITED STATES.

No. 160.

JOHN W. YARBOROUGH, TRUSTEE, &c., AND HENRY SHULTZ, APPELLANTS,

vs.

THE BANK OF THE STATE OF GEORGIA AND AL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF GEORGIA.

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J. & G. S. Gideon, printers.

UNITED STATES OF AMERICA.

To the judges of the circuit court of the United States for the district of Georgia:

John W. Yarborough, of the town of Hamburg, in the State of South Carolina, a citizen of the State of South Carolina, and who is trustee of Henry Shultz, an insolvent debtor, and for the creditors of the said Henry Shultz, and Henry Shultz, of the town of Hamburg, in the State of South Carolina, and a citizen of the State of South Carolina, bring this their bill, in the nature of a bill of revivor and supplement, against the Bank of the State of Georgia, located in the city of Savannah, in the State of Georgia, a corporation created by and existing under the acts of the Legislature of the State of Georgia, the President, Directors, and all the Stockholders of the said the Bank of the State of Georgia, and every of them, are averred to be citizens of the State of Georgia, John McKinne and Gazaway B. Lamar, both of whom are citizens of the State of Georgia, and the City Council of Augusta, in the State of Georgia, a municipal corporation created by and existing under and by virtue of acts of the Legislature of the State of Georgia, the mayor, members, and all other officers and corporators of said municipal corporation, are citizens of the State of Georgia. And thereupon your orators complain and say, that heretofore, on the ninth day of May, in the year of our Lord one thousand eight hundred and twenty-one, Christian Breithaupt, then in life, but since deceased, and at that time a citizen of the State of South Carolina, and your orator, Henry Shultz, also at that time a citizen of South Carolina, exhibited their original bill of complaint in this honorable court, against the Bank of the State of Georgia, and others in said bill of complaint (which is now in this honorable court) named and charged. Which said bill, after stating divers matters and things as therein contained, prayed that the bridge in said bill of complaint mentioned and described might be decreed to be liable to the redemption of bridge bills in preference to a certain mortgage to the Bank of the State of Georgia on said bridge; and that the court should make such order as would be necessary to authorize the holders of bridge bills to present their claims before said court, that they might have an equitable and ratable proportion of the proceeds of said bridge, when the same could be safely sold, and that the Bank of the State of Georgia might be enjoined from proceeding to sell the said bridge under the executions in said bill of complaint mentioned, and that the plaintiffs in the Mayor's court, in the city of Augusta, should be enjoined from proceeding to the sale of the same, and that all the holders of bridge bills might be enjoined from proceeding to sell the said bridge under judgments or executions to be thereafter obtained; and that the court would grant such relief as to justice should appertain.

That pursuant to the prayer in said bill the said circuit court, on the twelfth day of May, eighteen hundred and twenty-one, ordered an in-

junction, to issue, to stay proceedings under the several judgments in said bill mentioned, obtained in the Mayor's court of Augusta, and on the thirteenth day of June, in the same year, it was by said court ordered, that an injunction issue in said cause to stay the sale of said bridge, until the further order of the circuit court of the United States for the Georgia district should be had thereon. To which said original bill there are made sundry exhibits as parts and portions of said bill, marked as exhibits A, B, C, D, E, F, and G, and the said complainants in said bill likewise prayed writs of subpœna to issue, according to the rules and usages of said court, commanding the defendants in said bill to appear and answer the charges in said bill contained.

That on the twelfth day of May, eighteen hundred and twenty-one, the said complainants, by leave of the court, exhibited an amendment to said original bill of complaint, in which, after stating and charging divers matters and things as therein contained, prayed a writ of subpœna to be directed to Wm. B. Bullock, Samuel Hale, Thomas Cumming, and John McKinne, (parties defendant to said bill and amendment,) commanding them to appear, at a day certain, to answer to the premises, and to abide the decree of the court touching the same; to which amendment there is an exhibit of documents made, marked exhibit H.

That afterwards, at the December term of the said circuit court of the United States for the district of Georgia, the Bank of the State of Georgia, by its President, under the corporate seal of said Bank, and the corporate oath of Samuel Hale, the President of the branch of said Bank, in the city of Augusta, submitted and filed its answer to the said bill and amendments; to which said answer there are sundry documents annexed, marked exhibits A, B, C, D, E, F, G, H, and I.

That on the ninth day of May, eighteen hundred and twenty-two, John McKinne filed in said court his answer to said bill and amendments; to which said answers of the Bank of the State of Georgia and of John McKinne, the complainants in said bill, on the thirteenth day of May, in the same year, filed a general replication.

That on the twenty-ninth day of July, eighteen hundred and twenty-two, the complainants, by leave of the court first had, further amended their said bill in relation to a certain lot in the city of Augusta, number seventeen, and the buildings thereon known as the Bridge bank, in and by which the Bank of Augusta, Daniel Savage, and James Frasier, were made parties, and the writs of injunction to stay the sale of said lot, and of subpœna, were prayed by complainants, and granted by the court. To which said amended bill, Thomas Cumming, President of the Bank of Augusta, filed his plea to the jurisdiction of the court, on the sixteenth day of April, eighteen hundred and twenty-three, and on the first day of September, in the same year, Daniel Savage and James Fraser filed their several answers to said amended bill.

That at May term of the said circuit court of the United States, for the district of Georgia, in the year eighteen hundred and twenty-three, the complainants further amended their said bill, by leave of the court, and the consent of the defendants' solicitor, and among other things, as

therein appears, prayed the writ of subpœna against Thomas Cumming, President of the Bank of Augusta, to appear and answer the charges contained in said amendment.

And afterwards, on the thirteenth day of December, eighteen hundred and twenty-three, it was, on motion of complainants' solicitor, ordered that they have leave to dismiss their said bill as to the Bank of Augusta, one of the defendants ; which said original bill, with the several exhibits thereto appended as part thereof, together with the several amendments herein before stated, formed the original bill of complaint of the complainants, which, together with the answers of the defendants as hereinbefore stated, with the exhibits thereto appended, and the general replication of the complainants to said answers, made up the pleadings as between the parties complainant and defendant; all of which will appear by reference being had to the records and files of this honorable court, and which these complainants pray may be taken and considered together as the original bill, answers, and replication in said cause.

That, in the progress of said cause, and whilst the same was pending before the honorable the judges of the circuit court of the United States, for the district of Georgia, various and numerous orders were made by said court, as connected with, and appertaining to, said cause; and, amongst said decretal orders the said court, on the twenty-first day of December, eighteen hundred and twenty-one, by and with consent of the parties complainants and defendants, and of certain attaching creditors, did order that Freeman Walker and Christopher Fitzsimmons be and they are hereby appointed commissioners, for the intent and purpose of selling the Augusta bridge, and its appurtenances, as mortgaged to the State Bank of Georgia. That the parties, complainant and defendant, should, within thirty days, severally execute powers of attorney to the said commissioners to sell and dispose of the said bridge in pursuance of said order, and under the conditions in the said order prescribed; and that the said commissioners should make return to the then next session of said court of all and whatsoever should be done by them in that behalf.

That, on the ninth day of May, eighteen hundred and twenty-two, (it being a day of the term of said circuit court,) Freeman Walker and Christopher Fitzsimmons, by Freeman Walker, who were appointed commissioners for the intent and purpose of selling the Augusta bridge, and its appurtenances, as mortgaged to the Bank of the State of Georgia, submitted their report under said order, in which they say, that, having received letters of attorney from the complainants, and from the Bank of the State of Georgia, authorizing the sale of the Augusta bridge, in pursuance of the decree, they proceeded to advertise the same for sale, and appointed Thursday, the eleventh day of April, 1822, for that purpose ; but, before that period arrived, information was received that Col. John McKinne was also a defendant; and, as no letter of attorney had been received from him, the commissioners could not conceive themselves authorized to dispose of the property in question.

That personal application was made to Col. McKinne, and he was

earnestly solicited to grant his authority and permission to sell, but he positively refused.

On the thirteenth day of the same month of May, in the same year, (it being a day in the term of said court,) it was, on motion of the solicitors for the Bank of the State of Georgia, and by consent of complainants, ordered, that Freeman Walker, esq., and Christopher Fitzsimmons, esq., be and they were hereby appointed commissioners of the court, for the purpose of selling the Augusta bridge, and its appurtenances; and that they be authorized to take peaceable possession of the same; and further directed the said commissioners in their duties in advertising the terms of sale and disposition to be made by them of the proceeds of the said sale, restricting them that said bridge should be put up at $50,000, and not to be sold for a less amount; and, if not sold, the commissioners were authorized to receive the tolls, and appropriate such portion of them as might be necessary to the repairs of the bridge, depositing the residue, monthly, in one of the banks of Augusta, subject to the order of the court; and that return should be made by the said commissioners to the court at its then next session of all and whatsoever should be done in that behalf.

On the seventeenth day of December, eighteen hundred and twenty-two, (it being a day in the term of said court,) the said commissioners, Christopher Fitzsimmons and Freeman Walker, esqrs., made their report to the court, in which they state, that, on the 5th day of August, 1822, they went into the possession of the said bridge and appurtenances, and received the tolls at the same up to the ninth day of December, inclusive, of the same year; that the bridge, and its appurtenances, was sold on the 28th day of November, 1822, at the market house, in the city of Augusta, when the Bank of the State of Georgia, (by their agent, Samuel Hale, esq.,) being the highest and best bidder, the same was knocked off to that Corporation at the price and for the sum of seventy thousand dollars; and had complied with the terms of the sale. That the tolls of the bridge, from the fifth day of August, to the ninth day of December, inclusive, was $4,638 20, from which deduct the expenditures for repairs, rents, and all incidental expenses, left a nett balance of $1,686 36, in the hands of the commissioners, subject to the order of the court. And the said commissioners, under the further order and direction of the court, deposited in the Bank of the State of Georgia the sum of seventy thousand dollars, the sum for which the said bridge was sold; and likewise the sum of $1,686 36, the nett balance of the tolls of said bridge, after deducting all expenses; making, together, the sum of seventy-one thousand six hundred and eighty six dollars and thirty-six cents. For which said sum of seventy-one thousand six hundred and eighty-six dollars and thirty-six cents, the Bank of the State of Georgia, under the order of said court, issued its certificate, that Christopher Fitzsimmons and Freeman Walker, esquires, in pursuance of the order of said court, had deposited in the Bank of the State of Georgia, to the credit of the cause of Henry Shultz and Christopher Breithaupt, complainants, against the Bank of the State of Georgia and oth-

ers, defendants, there pending in equity in the said court, the sum of seventy-one thousand six hundred and eighty-six dollars and thirty-six cents, which sum was to bear interest at the rate of six per cent. per annum from the date of said certificate; and to be subject to the order of the said sixth circuit court, in the same manner as funds deposited under the laws of the United States by the officers of said court. Which certificate of deposite was, under an order of one of the judges of said court, bearing date on the seventeenth day of February, eighteen hundred and twenty-three, deposited with the clerk of the said circuit court.

That, in the further progress of said cause, by leave of the court, numerous witnesses were examined on interrogatories, and their answers taken in writing, both on behalf of complainants and defendants in said cause, all of which testimony is of file in this honorable court, and appertaining to said cause.

On the sixteenth day of July, eighteen hundred and twenty-four, the honorable the judges of the sixth circuit court of the United States, for the district of Georgia, in furtherance of the proceedings in said cause, made an interlocutory decree, or decretal order, preparatory to a final decree, in and by which a reference should be had to the register to enquire and report the state of accounts between the McKinnies and the State Bank, upon the loan of $50,000; the sales of the Warehouse square, specifically pledged for said loan; the amounts of tolls received at the south end of the bridge from the time it was taken possession of in behalf of the Bank of the State of Georgia; and to report upon such other discounts as the complainant might insist upon, as proper to be made upon the same sum. That the said register should enquire and report the number of bridge bills then actually out, with the holders thereof respectively, and such facts tending to prove them honest and bona fide holders thereof, as each case might severally suggest. Also, the sums taken by the complainants, or either of them, at the north end of the bridge, from the time the south end passed into the hands of the defendants, or their agent, or any other public officer at their instance; and generally the state of accounts between Henry Shultz and the Bridge company; and, also, report upon such discounts or charges as the defendants might suggest, and give proof of, as proper against the complainants, or either of them.

In order to enable the register to carry into effect the said decretal order of the court, the evidence of numerous persons was taken in writing, and which is now of file in said court as appertaining to said cause. That, on the seventeenth day of December, eighteen hundred and twenty-four, (it being a day in the term of said court,) the said register filed his report under said order, to which report the complainants on the day thereafter filed their exceptions in writing in said court. And the court ordered, that the parties, complainants and defendants, should have leave to adduce additional testimony as to the solvency or insolvency of John McKinne and Barna McKinne, on the third day of May, 1819, and on the tenth day of June, 1819, and that they have leave to take out commissions for that purpose; the testimony so to be

taken to be used as testimony in the cause or otherwise, as the court might thereafter adjudge; under which said order further testimony was taken by each party, and which is now of file in said court, and appertain to the proceedings thereof in said cause.

That, on the ninth day of May, eighteen hundred and twenty-five, (being a day of the regular term of said circuit court,) by the order of said court, the case was opened, and testimony in relation to the insolvency of John McKinne and Barna McKinne read, and witnesses sworn and examined in court on the part of the complainants, and their testimony entered on the minutes of said court.

On the twelfth day of May, eighteen hundred and twenty-five, (it being a day in the regular term of said court,) their honors, William Johnson and Jeremiah Cuyler, judges of said circuit court of the United States for the district of Georgia, presiding, the clerk of said court was ordered to certify to the Supreme Court a difference of opinion in said case, on two points.

1. Whether the complainants are entitled to relief.

2. What relief should be decreed to them; unless in thirty days he should be instructed by Judge Cuyler, to enter a decree *pro forma* for either party; and on the same day of the same term of the court, on motion of complainants' solicitor, and it appearing that there would be a considerable surplus of the proceeds of the sale of the bridge opposite Augusta, even after discharging the entire claim of the Bank of the State of Georgia; and it appearing that the complainant, Christian Breithaupt, was prosecuting said cause for the benefit of all the holders of bridge bills, it was ordered that said bank deposite with the register of said court five thousand dollars of the aforesaid funds, on or before the twelfth day of June then next, and that said register pay over the said sum to the said Christian Breithaupt, upon his giving to the said register a bond, with good security, conditioned to refund the same with interest, at six per cent. from the date of the loan, whenever said court should so order; which said sum of five thousand dollars was received by the said Christian Breithaupt, from the register of said court, on the thirteenth day of June, eighteen hundred and twenty-five.

On the sixth day of May, eighteen hundred and thirty, (being the first day of a regular term of the sixth circuit court of the United States for the district of Georgia,) the court caused an order to be made and entered, that it appearing to the court that the mandate of the Supreme Court of the United States was received, remanding the said case to said circuit court, it was ordered that the said mandate be filed, and the said case reinstated on the docket; by which said mandate of the Supreme Court of the United States it was ordered and adjudged by said Supreme Court, that the cause be remanded to the said circuit court, with directions to proceed therein according to law.

And on the eighth day of May, eighteen hundred and thirty, (it being a day of the regular term of the sixth circuit court of the United States for the district of Georgia,) the following was entered as the decree of said court: "This cause came on to be heard on the amended

bill, answers, exhibits, and evidence; and the court having considered the same—

It is ordered and decreed, that the sale of the Augusta bridge, made by virtue of certain powers of attorney, and the consent of the parties, and held and conducted under the direction of commissioners heretofore appointed by this court, be, and the same is hereby, ratified and confirmed, and the said Bank of the State of Georgia vested with a full, absolute, and perfect title to the said bridge and its appurtenances, under the said sale, freed, acquitted, released, and discharged from all manner of liens, claims, or incumbrances, at law or in equity, on the part of the said Henry Shultz, John McKinne, Barna McKinne, Christian Breithaupt, or any other person or persons, parties to the said bill of complaint."

"And it is further ordered and decreed by the court, by and with the consent of the parties, complainants and defendants, that the scrip issued by the Bank of the State of Georgia, for the sum of seventy-one thousand six hundred and eighty-six dollars and thirty-six cents, and dated the fifteenth day of February, in the year of our Lord one thousand eight hundred and twenty-three, be cancelled and delivered up to the said bank by the clerk of this court; and that the bond of Christian Breithaupt, Alexander McKinzie, and Demas Ponce, in the penal sum of ten thousand dollars, dated the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and twenty-five, and filed in the office of the clerk of this court, be cancelled; and that said bill of complaint, as to the several other matters therein contained, be dismissed, with costs."

"We consent and agree, that the foregoing decree be entered at the next, or any succeeding term of the said circuit court, U. S., district of Georgia.

(Signed) GEO. McDUFFIE, *Sol'r for Complt's.*
(Signed) R. H. WILDE, *Sol'r for Deft's.*

WASHINGTON, 10*th April*, 1830.

"The within decree having been drawn up, agreed to, and subscribed by the solicitors on behalf of the parties, complainants and defendants, on motion of Mr. Wilde, ordered, that the same be filed and entered as the decree of this court."

(Signed) WILLIAM JOHNSON,
(Signed) J. CUYLER.

Which said orders, decretal orders, hereinbefore set forth and referred to, together with all the testimony taken and published in said cause, form and are part and parcel of the proceedings in the investigation of said cause, and are of record and of file in this honorable court, and which these complainants pray may be taken, considered, and referred to as forming a portion of said cause; and that the said original bill, with all its amendments, the answers, decrees, decretal orders, and evidence, as hereinbefore stated or referred to by your orators, may be reinstated and revived, for the causes hereinafter set forth, to the extent

of the several interests of the parties to this bill, so far as the same may be deemed by this honorable court applicable to these several claims.

And your orators further shew, by way of supplement unto your honors, that your orator, Henry Shultz, under an act of the Legislature of South Carolina, commonly called the insolvent debtors' act of said State, made and executed an assignment of all his estate in trust for his creditors to Thomas Harrison, treasurer of the upper division of the State of South Carolina, (the said Henry Shultz being at that time a citizen of said State of South Carolina,) on the thirteenth day of October, eighteen hundred and twenty-eight, amongst which estate so assigned was the interest of the said Henry Shultz in the Augusta bridge, in said original bill described and mentioned. That afterwards, in a case of John Stony and John Magrath and others, against the said Henry Shultz and others, in the court of equity for Edgefield district, South Carolina, an order was passed, appointing Ker Boyce and Thomas Harrison trustees of your orator, Henry Shultz, in place of the assignee aforesaid; that the said Thomas Harrison has departed this life, and the said Ker Boyce has been released and discharged by the court of equity for Edgefield district, in the State of South Carolina, from his trust, and your orator, John W. Yarborough, appointed trustee in the place of the said Ker Boyce; and that your orator, John W. Yarborough, is now the only trustee, in law and equity, authorized to act under the said assignment of the said Henry Shultz, for the benefit of the creditors of said Shultz; and that the said bridge and its appurtenances being originally pledged as copartnership property by John McKinne and Henry Shultz for the redemption of the bills issued by the said John McKinne and Henry Shultz, as charged in the original bill of complaint of Christian Breithaupt and Henry Shultz in this honorable court, that the lien thus created has never been divested or impaired by virtue of any act of the said Henry Shultz, Thomas Harrison, as assignee, or by Ker Boyce and Thomas Harrison, as trustees, or by either of them, during the continuance of such trust; and that no act or consent of your orator, John W. Yarborough, since his appointment to said trust, and that no act or consent of the said Henry Shultz, done or given subsequent to the date of the assignment made by him as an insolvent debtor, can impair the rights of the creditors of the said Henry Shultz, or the rights of the holders of bridge bills, or of judgments founded on bridge bills against John McKinne and Henry Shultz; that, if the mortgage executed by John McKinne and Barna McKinne, to the Bank of the State of Georgia, as stated in the original bill, be not null and void, under the act of the Legislature of the State of Georgia, as your orators charge it to be, your orators contend, that the said bank, and all claiming under it, occupy the ground of mortgagees in possession, and are bound to account for the rents and profits of said bridge, as the same has never been sold under the foreclosure of said mortgage; and if the said mortgage is held to be void, that the said bank, and all others claiming under it, are bound to surrender up the said bridge, and account for the profits thereof, during the time which

has elapsed since the possession was taken by said bank. That in this view of the case the said bridge, and its entire income and profits, your orators contend are first liable to the redemption of bridge bills and judgments founded thereon; and after these are paid, one-half of the surplus becomes liable in the hands of your orator, John W. Yarborough, as trustee as aforesaid, to satisfy the creditors of your orator, Henry Shultz, and the balance will become the property of your orator, Henry Shultz; and the remaining half, after satisfaction of bridge bills, and all claims originating thereon, will become the property of the other member of the Bridge company. Your orators, from authentic sources of evidence, have computed the income of said bridge, with simple interest, at six per cent. per annum, from the time the Bank of the State of Georgia acquired possession, at the sum of about five hundred and ninety-five thousand dollars, and at seven per centum per annum, to about the sum of six hundred and thirty-five thousand dollars. Your orators are informed, that the said Bank of the State of Georgia, on the fourth day of May, in the year eighteen hundred thirty-eight, conveyed all its interest in said bridge and its appurtenances to the said Gasaway B. Lamar, for the sum of seventy thousand dollars, by a quit-claim deed without warranty of title, with a full knowledge at the time, on the part of said Lamar, of all the incumbrances and claims on the same, and with a perfect knowledge of the absence of title in the Bank of the State of Georgia to said property. And that the said Lamar possessed said bridge and its appurtenances, and received the income and profits thereof, from the fourth day of May, eighteen hundred and thirty-eight, until the twenty-first day of January, eighteen hundred and forty, and on that day conveyed his interest in the said bridge and its appurtenances to the City Council of Augusta, in the State of Georgia, for the sum of one hundred thousand dollars by quit-claim deed, without warranty of title; and that at the time of the said sale, by the said Lamar, and purchase by the City Council of Augusta, that the said City Council of Augusta, through its mayor and members, had full knowledge of the incumbrances and claims of your orators on said bridge and its appurtenances, and became the purchasers of the same with such knowledge, and that the said City Council of Augusta has continued to hold the possession and received the profits of said bridge from the time of the said purchase from Lamar.

Your orators further shew, that the Legislature of the State of Georgia, by an act passed on the twenty-third day of December, eighteen hundred and forty, extending the charter of said bridge to the City Council of Augusta, expressly by a proviso to said act reserves the rights of all other persons to the said bridge.

Your orator, John W. Yarborough, trustee for Henry Shultz, states, that under a decree in the case of John W. Stony and John Magrath and others, against Henry Shultz and others, in the court of equity, for Edgefield district, in the State of South Carolina, that the proceeds of the sales of the private property of the said Henry Shultz, to the amount of about seventy thousand dollars, was appropriated to the

payment of bridge bills, and judgments obtained on bridge bills; and that the unsatisfied creditors of the said Henry Shultz have the equity of now requiring a like amount of the copartnership property of the Bridge company to be applied to the payment of their individual claims against the said Henry Shultz, with their legal interest on the same; and your orator Henry Shultz, sheweth that he has heretofore paid out and advanced, of his own private means, for the redemption of bridge bills, divers large sums of money, amounting in the aggregate to about the sum of one hundred and fifty-three thousand two hundred and ninety-six dollars and forty-one cents to wit, the sum of fourteen thousand seven hundred and fifty dollars in cash, on the twenty-fifth day of May, eighteen hundred and nineteen, to the Bridge bank, to pay off in part the individual depositors in said bank after the same had stopped payment of its bills; the sum of sixty thousand four hundred and fifty dollars in good notes, deposited with William Jones at the branch of the Bank of the State of Georgia, at Augusta, on the thirty-first day of May, eighteen hundred and nineteen, to pay off bridge bills; cash advanced to pay off bridge bills after the bank had stopped payment, about the twenty-sixth day of May, eighteen hundred and nineteen, the sum of twenty-eight thousand six hundred and sixteen dollars and ninety two cents, in bridge bills, placed in the hands of Samuel Hale, president of the Branch Bank of the State of Georgia, in Augusta; on the twenty-ninth day of September, eighteen hundred and twenty-nine, thirteen thousand eight hundred and seventy-two dollars, and in the year eighteen hundred and thirty-six, cash paid out of the proceeds of the sales of your orator's property and effects, which had been assigned to Thomas Harrison, and afterwards sold and collected by Ker Boyce and Thomas Harrison, trustees, and paid out under and by virtue of a decree of the court of equity for Edgefield district, South Carolina, on judgments founded on bridge bills, the sum of thirty-five thousand six hundred and seven dollars and forty-nine cents, the simple interest on which said several sums advanced and paid by your orator Henry Shultz, at eight per cent. per annum, will amount to the sum of about *the sum of* two hundred and seventy thousand four hundred and thirty dollars, which added to the principal sums as aforesaid, paid by your orator and out of his individual means, together make the sum of four hundred and twenty-three thousand six hundred and twenty-six dollars and forty-one cents, which sum is subject in equity to a credit of ten thousand dollars, handed to your orator Henry Shultz, by Samuel Hale, president of the branch of the Bank of the State of Georgia at Augusta, on the fifteenth day of September, eighteen hundred and twenty-nine; and the sum of twelve thousand eight hundred dollars, the interest on the same at eight per cent. per annum, from the time the same was received by your orator from the said Samuel Hale, which will leave a balance due to your orator Henry Shultz, for and on account of advances and payments made by him out of his individual means for the redemption of bridge bills, about the sum four hundred thousand eight hundred and twenty-six dollars; which said sum he insists he is in equity

entitled to receive next after the redemption of the outstanding and unredeemed bridge bills or unsatisfied judgments thereon, and the reimbursing to John W. Yarborough, the trustee, as herein before stated, before the payment over of any portion of the sums due to your orators from the said defendants, or any of them; and your orator Henry Shultz states that, from the most accurate information in his power, that there is still unredeemed and outstanding of bridge bills, issued by John McKinne and your orator Henry Shultz, as proprietors of said bridge and Bridge bank, about the sum of ninety-two thousand two hundred and sixty-three dollars thirty-one and one fourth cents, including all such as may have been lost or destroyed.

And your orators further shew unto your honors, that they are advised and believe that the decree, as entered by this honorable court, on said original bill, is void as to all the parties to the said original bill, except so much thereof as relates to the claims of Christian Breithaupt, as the solicitor who originally represented the complainants in said original bill, did not at the time he consented to said decree represent the interest of the creditors of the said Henry Shultz; that he had no power or authority at that time to represent any other interest in said cause than that of said Breithaupt, and that no act or consent of the complainants' solicitor could in any manner affect or impair the rights of the creditors of Henry Shultz, as all his interest in the subject matter in said cause had, before the consent given to said decree by said solicitor, passed out of him by virtue of his deed of assignment, and vested beneficially in his creditors; and that neither the assignees or the creditors, or either of them, had granted or given any power or authority to the said solicitor of Henry Shultz and Christian Breithaupt to represent him or them, or any or either of them, in said cause; therefore any consent given by the solicitor, so far as the interest of the creditors of said Henry Shultz and of the Bridge company were concerned, was without authority, and operated as a fraud on said creditors, and wholly void, and cannot in equity be binding and obligatory. And your orators show unto your honors, that they are informed and believe, and so they charge, that the sale of said bridge and its appurtenances, as made by Christopher Fitzsimmons and Freman Walker, commissioners appointed by a decretal order of this honorable court, was and is void, because one of the parties to the original bill, John McKinne, and who was a joint proprietor with your orator Henry Shultz of said bridge and its appurtenances, never consented to, or executed any power or authority to the said commissioners to make said sale or to execute any title to the purchasers for the same; and the said bridge and appurtenances being copartnership property of the said John McKinne and your orator Henry Shultz, and by them specifically pledged and set apart for the redemption of the bridge bills, (as stated in the original bill,) the interest therein could not be severed without impairing the rights of the creditors of the said bridge company; and the said sale being void as to the interest of the said John McKinne renders it void in to-to, and therefore no legal or equitable title to the same has ever vested in the Bank of

the State of Georgia, or any holding possession under it; and the original possession of said bridge, by the Bank of the State of Georgia, being tortuous and forcible, that the said bank, and all those who have held, or are now holding under it, are in equity and good conscience bound to account for the income and profits of the same, for the several periods of time for which each have held and enjoyed the possession of the same; and as your orators believe and charge, the nett profits of said bridge, from the time your orator Henry Shultz was forcibly dispossessed thereof, (as charged in the original bill, was equal annually, and for each and every year, [to] the sum of fifteen thousand dollars over and above all expenses necessarily incurred in and about the keeping up the same; and your orators submit to this honorable court, that if the sale of the said bridge, as made by Freeman Walker and Christopher Fitzsimmons, commissioners to the Bank of the State of Georgia, should be held valid, that the said bank is bound to account [to] your orators for the amount of the purchase money and six per cent. interest thereon, and also for the nett amount of the tolls received at said bridge, from the third day of March, eighteen hundred and twenty-one, to the tenth day of December, eighteen hundred and twenty-two, with eight per cent. interest thereon. That repeated but unsuccessful efforts have been made to induce the said Bank of the State of Georgia, the said Gazaway B. Lamar, and the said City Council of Augusta, to deliver said bridge, and account for the income and profits thereof; but all of which they have heretofore refused and neglected:

In tender consideration whereof, and for as much as such matters are properly cognizable in this honorable court, where alone the claims of orators can be fairly and justly adjusted.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may upon their several and respective corporal oaths, (and the said Bank of the State of Georgia and the City Council of Augusta, under their respective corporate seals,) and according to the best and utmost of their several and respective knowledge, rememberance, information, and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is to say—

1st. Whether John McKinne and your orator Henry Shultz did not form a partnership in the business of banking on or about the first day of July, eighteen hundred and sixteen, or at what time; and was or not the said firm notoriously known and called by the name of the Bridge Company of Augusta?

2. Whether the said John McKinne and Henry Shultz were not the sole joint owners and proprietors of the bridge across the Savannah river, opposite the city of Augusta, at the time said partnership was entered into between them; and whether or not it was agreed by and between them, at the time of entering into said partnership, that said bridge should, with other property, constitute a partnership fund, which neither should have power to alienate for his individual debts?

3. Whether the said bridge and its appurtenances was not to be kept and held liable for the redemption of all bills issued or to be issued by the said company, in exclusion of the private debts of either of the partners?

4. Whether the said bridge was not entered on the books of the Bridge company as partnership property, and as part of the banking capital of said Bridge company; and whether same was not entered at the valuation of seventy-five thousand dollars, or at what other amount?

5. Whether the bills of said company were not drawn payable to bearer, and signed by John McKinne and Henry Shultz, proprietors; whether all the bills issued and circulated by said company were not stamped on their face with a representation of said bridge; and did they not circulate as other current bank bills or money; and was not the fact notorious and publicly known, that the bridge was partnership property, and responsible for the payment of the bills issued by the said Bridge company?

6. Whether the Bridge company or Bridge bank did not stop payment of its bills on the twenty-fourth day of May, eighteen hundred and nineteen, or at what time; and whether Henry Shultz did not on that day publicly assume his place, as one of the proprietors of said banking company, in place of Barna McKinne, and proclaim his own liability, and the liabilities of the said bridge, and all the other partnership property of said company, for the speedy redemption of all the outstanding bills of said company?

7. Whether John McKinne and Barna McKinne did not, on the tenth day of June, eighteen hundred and nineteen, execute a mortgage to the Bank of the State of Georgia on said bridge and its appurtenances, to secure the payment of the sum of ninety thousand dollars of the individual debt of John McKinne, and of John McKinne and James Lamkin, or what other debts was said mortgage made to secure?

8. Whether any, and if any, what other property was included in said mortgage, and were not John McKinne and Barna McKinne both, or one, and which of them, insolvent or in failing circumstances, at the time of the execution of said mortgage?

9. Whether said mortgage has ever been foreclosed, and when and where on said bridge for what sum foreclosed; and whether the said bridge has been levied on, advertised, and sold under the foreclosure of said mortgage; and when, and where, and to whom, and for what sum; and who received the proceeds of the sale of said bridge?

10. Whether the Bank of the State of Georgia ever has had any title to said bridge under the foreclosure of said mortgage, and whether said mortgage was not null and void under the law of the State of Georgia, because the execution of said mortgage was an attempt to prefer one creditor in exclusion of others, by persons in failing circumstances; and because it was an attempt to make partnership property, which has been specially pledged for the redemption of bridge bills liable for the private debts of one of the partners?

11. Whether the sheriff of Richmond county, on the third day of

March, eighteen hundred and twenty-one, did not forcibly dispossess and eject your orator, Henry Shultz, from the said bridge, and take possession thereof; and whether the said sheriff was not aided, directed, and assisted in said act, by the president of the branch of the Bank of the State of Georgia, and the attorney of said bank, in ousting said Shultz of the possession of said bridge; and whether said bridge had before that time been sold under the foreclosure of said mortgage, or under any other, and what other, legal process?

12. Whether the Bank of the State of Georgia, either by itself or its agents, or others pretending to claim under said bank, has or have not remained in the possession of the said bridge, and has or have not continued so to do, and receive the tolls and profits thereof, from thence hitherto?

13. Whether the Bank of the State of Georgia did not receive the tolls of said bridge from the third day of March, eighteen hundred and twenty-one, to the tenth day of December, eighteen hundred and twenty-two; and what was the whole sum received as tolls at said bridge within that period; and what the amount of expenses and charges incident to the same for the same period; and what the amount of the nett income from the tolls of said bridge, for the same time; and has the said nett sum been disposed of and applied?

14. Whether the said bridge was not sold on the tenth day of December, eighteen hundred and twenty-two, by commissioners; whether said commissioners made said sale with the consent and under a power from all the parties to the suit then pending, in which the order of sale was granted; if all the parties to said cause did not consent to said sale, which of them refused or omitted to consent to or authorize said sale, and what and whose interest was sold?

15. Whether the Bank of the State of Georgia did not become the purchaser of said bridge at said sale; for what sum; how was the purchase money paid or secured; to whom and when paid, and to whose account credited; and was the same applied, or any portion of it, to the extinguishment of the mortgage debt hereinbefore mentioned, and how much thereof?

16. Whether the Bank of the State of Georgia, by itself or its agents and servants, did not continue in the possession of said bridge, and receive all the profits and toll at the same, from the tenth day of December, eighteen hundred and twenty-two, until the fourth day of May, eighteen hundred and thirty-eight; and what was the amount of the income or toll of said bridge for said period of time; how much for each month, and how much for each year within that period of time; and what the amount of expenses annually, and for each year within said period of time; for keeping up said bridge and collecting the tolls at the same; and how and in what manner have the nett proceeds of said tolls been applied?

17. Whether the Bank of the State of Georgia did not, on the fourth day of May, eighteen hundred and thirty-eight, convey its interest in said bridge to Gazaway B. Lamar, for the sum of seventy thousand

dollars, or some other and what sum; and whether the said Lamar was not fully acquainted at the time of said purchase with nature and extent of the claim of title which the Bank of the State of Georgia professed to hold to said bridge; and did he not become the purchaser with such knowledge and description of title to said bridge; did the said Bank execute to the said Lamar; was it a warranty deed or a quit-claim only, or what other conveyance?

18. Whether the said Lamar did not possess said bridge, and receive the income and profits thereof, from the fourth day of May, eighteen hundred and thirty-eight, until the twenty first day of January, eighteen hundred and forty; and what was the entire income, and the monthly income for each month, within said period of time of said bridge; what the expenses during said time, and what the nett income or amount of tolls for the time he possessed the same?

19. Whether the said Gazaway B. Lamar did not, on the twenty-first day of January, eighteen hundred and forty, convey his interest in the said bridge to the City Council of Augusta, in the State of Georgia, for the sum of one hundred thousand dollars, by quit-claim deed, and without warranty of title; and whether the said City Council of Augusta, as a corporation, through its mayor and members, had not at the time of purchase from said Lamar full knowledge of the extent of the title of said Lamar, and of the extent of the title as made by the Bank of the State of Georgia to said Lamar, and notice of the incumbrances held over said bridge by your orators, or one and which of them; and was not said purchase made with such full knowledge?

20. Whether the said City Council of Augusta did not, and has not possessed said bridge, and received the income and profits arising from the same, from the twenty-first day of January, eighteen hundred and forty, continuedly to the present time; what sum has been received for toll at said bridge; what sum in each month and year, and what sum or sums has or have been expended in keeping up said bridge, and when and for what expended; and what has been the nett income from said bridge for each and every year, and up to the time of answering this interrogatory?

21. Whether the Bank of the State of Georgia has not been paid the debts of John McKinne, and of John McKinne and James Lamkin, the payment of which were intended to be secured by said mortgage, or some and what portion of said debts have been paid; when, by whom, and how much, has been paid; and has or has not John McKinne been released from all liability for or on account of any and all of said demands by the Bank of the State of Georgia; and when and [what] was the consideration of such settlement and discharge of said McKinne; and set forth a copy of such settlement, discharge, and release?

22. Whether Henry Shultz did not take the benefit of the insolvent laws of the State of South Carolina at the time and under the circumstances as stated in this bill; whether he did not execute such deed of assignment, as in said bill mentioned, to Thomas Harrison, for all his property, rights and credits, as in said bill stated; and whether the said

bridge and its appurtenances was not included in said deed of assignment; and were or were not all these facts known to the Bank of the State of Georgia, to John McKinne, Gazaway B. Lamar, and the City Council of Augusta, Georgia, or to which of them, at the time, or at what other time or times, and at what time, to each of said defendants?

23. Whether Ker Boyce and Thomas Harrison were not appointed trustees, as charged in said bill, and for the purposes therein stated, in place of the said assignee, or for what other object or purpose?

24. Whether your orator, John W. Yarborough was not appointed trustee as in said bill stated, in place of Ker Boyce was the survivor of Ker Boyce and Thomas Harrison, and whether is not still such trustee, and authorized to represent the interest for the creditors of said Shultz?

25. Whether such proceedings have not heretofore been had in the circuit court of the United States, for the district of Georgia, and in the Supreme court of the United States, in the original cause, as hereinbefore in this bill stated; or if any other, what other?

26. Whether the decree, as entered in the circuit court of the United States, for the district of Georgia, in said original cause, on the eighth day of May, eighteen hundred and thirty, is in accordance with the mandate of the Supreme Court of the United States; whether the same was by and with the consent of all parties immediately interested in subject matter in controversy in said cause; whether the assignee of Henry Shultz, or the creditors of the Bridge company were represented by any solicitor agent or attorney in said cause, authorized to consent to said decree; and whether said decree does not operate as a fraud upon the creditors of the Bridge company, the creditors of Henry Shultz, and upon Henry Shultz himself; and whether said decree ought not to be examined into, reviewed and reversed?

And your orator prays your honors that the original bill, with all the proceedings had thereon in this honorable court, may stand and be revived, and be placed in the same plight and condition in which the same was in before the decree was entered, as by consent, on the eighth day of May, eighteen hundred and thirty; that the said decree may be opened, inquired into, reviewed, set aside, and reversed; that the mortgage from John McKinne and Barna McKinne, to the Bank of the State of Georgia on said bridge, may be declared null and void; that the sale of said bridge, made by Christopher Fitzsimmons and Freeman Walker, commissioners, may be set aside and declared void; that the Bank of the State of Georgia, Gazaway B. Lamar, and the City Council of Augusta, be severally decreed and ordered to render a full and correct account of the nett income of said bridge for the periods of time they severally had the possession of the same; and that they each and severally be decreed to pay to your orators the said several sums which each have received, with such interest thereon as is customary, usual, and right in the court of the United States; and that the said City Council of Augusta be ordered and decreed to deliver over to your orators the full, quiet, and peaceable possession of the said bridge, with all its appurtenances; and that the transfers of said bridge by the Bank of the State

of Georgia to Gazaway B. Lamar, and by the said Lamar to the City Council of Augusta, may be decreed void and null, and set aside; or otherwise should the said sale as made by said commissioners be decreed and held valid by this honorable court, then that the said Bank of the State of Georgia be ordered and decreed to pay to your orators the amount of the purchase money for which said bridge sold, with interest thereon at six per cent. per annum, from the time of said sale and purchase; and also the nett amount of the tolls received at said bridge, from the third day of March, eighteen hundred and twenty-one, until the tenth day of December, eighteen hundred and twenty-two, with interest thereon at eight per cent. per annum; or, should the said mortgage on said bridge be held valid and binding, that then your honors will order an account to be taken of payments which have been made, and which should be applied to the extinguishment of said mortgage lien; and also an account of the income and profits of said bridge from the time the same passed into the possession of the Bank of the State of Georgia; and that if any sum should appear due on said mortgage, that an equal sum be taken from the income of the bridge and applied to the entire and final satisfaction of whatever balance may be found due on said mortgage; and that said bridge stand redeemed from said mortgage incumbrance; and that whatever balance of the income and profits of said bridge may after said final payment of the mortgage's lien appear to be in the possession of the Bank of the State of Georgia, said Lamar, and the City Council of Augusta, they may be severally ordered and decreed to pay with interest; and that from thenceforth the possession of the said bridge be decreed to your orators, unincumbered, and freed from all claims of the said Bank of the State of Georgia, Gazaway B. Lamar, or the City Council of Augusta, and any and all claiming under any or either of them; that whatever fund may be found to be due from each of the defendants, respectively, may be ordered and disposed of by this honorable court according to the rights of the parties in interest, consonant with principles of equity and justice; and that your honors will grant such other and further relief in the premises as to your honors may seem meet and proper.

May it please your honors to grant unto your orators the writ of subpœnas, to require the said the Bank of the State of Georgia and the City Council of Augusta, by their attorneys, and the said John McKinne and Gazaway B. Lamar, in their proper persons, to appear and answer according to the rules and practice of this honorable court; and as in duty bound your orators will ever pray, &c.

WM. Y. HANSELL,
WM. & WM. F. LAW,
Solicitors for the complainants.

Note.—The defendant, the Bank of the State of Georgia, is required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25, and 26.

The defendant, John McKinne, is required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 10, 14, 21, 22, 23, 24, 25, and 26.

The defendant, Gazaway B. Lamar, is required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 17, 18, 19, 22, 23, 24, 25, and 26.

The defendant, the City Council of Augusta, is required to answer the interrogatories numbered, respectively, 2, 3, 5, 6, 7, 9, 10, 11, 12, 14, 19, 20, 22, 23, 24, 25, and 26.

Original bill filed 19th May, 1845. GEO. GLEN, *Clerk*.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, compl'ts, and THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B Lamar, and the City Council of Augusta, defendants. } In equity.

And now, at June rules, 1845, come the defendants, the *the* City Council of Augusta, by their solicitor, Andrew J. Miller, and enter its appearance in the above cause.

THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants, ads. JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants. } In equity.

And now, at July rules, 1845, comes the defendant, the Bank of the State of Georgia, by its solicitors, McAllister and Cohen, and enter its appearance in the above cause.

McALLISTER & COHEN,
Solicitors Bank State Georgia.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants, vs. THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants. } In equity.

And now, at July rules, 1845, comes the defendant, John McKinne, by his solicitor, Andrew J. Miller, and enters his appearance in the above case.

July 7th, 1845. ANDREW J. MILLER, *Sol'r*.

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants, and THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants. } In equity.

6th circuit court U. S., district of Georgia.

August rules, 1845.

The defendant, Gazaway B. Lamar, having failed to enter his ap-

pearance, or to file his plea, demurrer, or answer to the complainants' bill, as prescribed by the rules of court, on motion of the complainants' solicitors, it is ordered, that the said bill of complaint be taken pro confesso as against the said Gazaway B. Lamar; and that, as against him, the said cause shall be proceeded in ex parte.

WM. Y. HANSELL,
WM. & WM. F. LAW,
Solicitors for complainants.

JOHN W. YARBOROUGH, trustee, and others,
vs.
THE BANK OF THE STATE OF GEORGIA, and others.
} In equity.

In the sixth circuit court of the U. S., for the district of Georgia.

These defendants, by protestation, not confessing all or any of the matters and things in said complainants' bill contained to be true, in such manner and form as the same are therein set forth and alleged, do demur to said bill; and, for cause of demurrer, shew that the said complainants have not, by their said bill, made such a case as entitles them, in a court of equity, to any discovery from these defendants respectively, or any or either of them, or any relief against them, or either of them, as to the matters contained in the said bill, or any of such matters; and that any discovery which can be made by these defendants, or either of them, touching the matters complained of in the said bill, or any or either of them, can not be of any avail to the said complainants for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainants to any relief in this court touching any of the matters therein complained of.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto; and they pray the judgment of this honorable court, whether they shall be compelled to make any further or other answer to the said bill; and they humbly pray to be dismissed from hence, with their reasonable costs in this behalf sustained.

McALLISTER & COHEN,
PETIGRU & LESESNE,
ANDREW J. MILLER,
Defendants' solicitors.

We appear for the defendants, and certify that, in our opinion, this demurrer is well founded in point of law.

PETIGRU & LESESNE,
ANDREW J. MILLER,
McALLISTER & COHEN,
Defendants' solicitors.

STATE OF GEORGIA, *Richmond county:*

Personally appeared Martin M. Dye, mayor of the city of Augusta,

and in behalf of the City Council of Augusta, defendants named in the above stated bill of complaint, being duly sworn, deposeth and saith, that the foregoing demurrer is not interposed for delay.

MARTIN M. DYE.

Sworn to before me, and subscribed this 26th July, 1845.

JAMES HARPER,
Justice of the inferior court of Richmond county.

UNITED STATES OF AMERICA, *district of Georgia:*

Personally appeared William Thorne Williams, president pro tempore of the Bank of the State of Georgia, who being duly sworn, says, that the foregoing demurrer is not interposed for delay.

W. THORNE WILLIAMS, *Prest. pro tem.*

Sworn to and subscribed before me, this 30th July, 1845.

JNO. C. NICOLL, *dist. judge.*

Filed at rules, August 4th, 1845.

G. GLEN, *Cl'k.*

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, compl's,
and
The BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants.

In the sixth circuit court of the United States for the district of Georgia, Sept. rules, 1845.

On motion of Thomas E. Lloyd, solicitor for Gazaway B. Lamar, it is ordered, that the complainants do shew cause, at the next rules day, why the order entered that the above bill of complaint be taken pro confesso, as against the said Gazaway B. Lamar, should not be set aside, and leave granted the said Gazaway B. Lamar to enter his appearance, and plead demur or answer to said bill.

September 1st, 1845.

JOHN W. YARBOROUGH, trustee, and Henry Shultz, compl's.
and
The BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants.
} In equity.

In the sixth circuit court of the United States for the district of Georgia.

The defendant, Gazaway B. Lamar, by protestation, not confessing all or any of the matters and things in said complainants' bill contained to be true, in such manner and form as the same are therein set forth and alleged, doth demur to said bill, and for cause of demurrer sheweth,

that the said complainants have not by their said bill made out such a case as entitles them in a court of equity to any discovery from these defendants, respectively, or any or either of them, or any relief against them, or any or either of them, as to the matters contained in the said bill, or any of such matters; and that any discovery which can be made by these defendants, or any or either of them, touching the matters complained of in the said bill, or any or either of them, can not be of any avail to the said complainants, for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainants to any relief in this honorable court, touching any of the matters therein complained of.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and prays the judgment of this honorable court, whether he shall be compelled to make any other or further answer to the said bill; and he humbly prays to be hence dismissed, with his reasonable costs in this behalf sustained.

THOS. E. LLOYD.
Sol. per G. B. Lamar.

I appear for the defendant Gazaway B. Lamar, and certify, that in my opinion this demurrer is well founded in point of law.

THOS. E. LLOYD, *Solicitor.*

UNITED STATES OF AMERICA, *district of New York:*

Personally appeared Gazaway B. Lamar, who being duly sworn, saith, that the foregoing demurrer is not interposed for delay.

G. B. LAMAR.

Affirmed to and subscribed before me, this 6th day of September, 1845.

GEO. W. MORTON,
Dy. cl'k, and U. S. commissioner
circuit court U. S.

UNITED STATES OF AMERICA, *district of New York:*

Personally appeared Gazaway B. Lamar, one of the defendants in a cause now pending in the sixth circuit court of the United States for the district of Georgia, in equity, wherein John W. Yarborough, trustee, and Henry Shultz, are complainants, and the Bank of the State of Georgia, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, are defendants. And the said Gazaway B. Lamar having been duly sworn, deposeth and saith, that the first information which he received *of the pendency* of the said cause, was through the columns of the "Savannah Republican," a newspaper published in the city of Savannah, and a copy of which, containing some account of preliminary proceedings in the said cause, was seen by deponent on or about the twentieth day of August last, in the city of New York.

G. B. LAMAR.

Affirmed to and subscribed before me, this 6th day of September, 1845. GEO. W. MORTON,
U. S. commissioner circuit court U. S.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, James W. Metcalf, clerk of the district court of the United States of America, for the southern district of New York, do hereby certify, that I am well acquainted with the handwriting of George W. Morton, whose name is subscribed to the annexed affidavits, and that the signature to the same is in his proper handwriting. And I do further certify, that he was at the time of signing the same deputy clerk of said court, and a commissioner duly appointed by the circuit court of the United States of America, for the southern district of New York, under and by virtue of the acts of Congress in such case made and provided.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said circuit court, this sixth day of September, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of these United States the seventieth. J. W. METCALF, *Clk.*

[L. S.]

Filed at rules, Oct. 6, 1845. GEO. GLEN, *Clk.*

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, compl'ts,
and
THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defendants. } In equity.

In the sixth circuit court of the United States for the district of Georgia.

On motion of Thomas E. Lloyd, solicitor for Gazaway B. Lamar, one of the defendants, it is ordered, with the consent of the complainant's solicitors, that the order entered at rules, August, 1845, that the above bill of complaint be taken *pro confesso* against the said Gazaway B. Lamar, be set aside, and leave be granted to the said Gazaway B. Lamar to enter his appearance and plead demur or answer to said bill.

November 8th, 1845.

Filed Nov. 8, 1845. GEO. GLEN, *Clk.*

JOHN W. YARBOROUGH and Henry Shultz, compl'ts,
and
THE BANK OF THE STATE OF GEORGIA, and others, defendants. } In equity.

Nov. term, 1845.—In the sixth circuit court of the United States for the district of Georgia.

The demurrers in the foregoing case having been set down for argu-

ment at this term of the court, upon motion and by consent of the solicitors for the complainants and the defendants, it is ordered, that the said demurrers be set down and stand for argument at the next term of this court in April next, in the city of Savannah.

MILLEDGEVILLE, 10*th Nov'r*, 1845.

United States of America, to the honorable the judges of the sixth circuit court of the United States, for the district of Georgia:

The petition of John W. Yarborough, of the town of Hamburg, in the State of South Carolina, a citizen of the State of South Carolina, and who is trustee of Henry Shultz, an insolvent debtor, and for the creditors of Henry Shultz, and Henry Shultz, of the town of Hamburg, in the State of South Carolina, and a citizen of the State of South Carolina, respectively sheweth, that your petitioners filed their bill of complaint in this honorable court, returnable to the rules in July, eighteen hundred and forty-five, against the Bank of the State of Georgia, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, as defendants in said bill named; that all of the said defendants appeared to the said bill, and have filed a general demurrer to the said bill; that the said demurrers have been set down for argument, and the sixth day of July next appointed for the argument of the same.

And your petitioners further shew, that they have since been advised to amend their said bill by introducing into said bill, as essential and material allegations, the proceedings of the Supreme Court of the United States, at January term of that court, eighteen hundred and twenty-eight, in the case of Christian Breithaupt and Henry Shultz, complainants below, vs. the Bank of the State of Georgia and others, with proper charges and allegations.

Your petitioners pray your honors that they may have leave to amend their said bill as they shall be advised, upon such terms as to your honors shall seem meet, and agreeably to equity and justice, and the practice of said court. And your petitioners will ever pray, &c.

WM. & WM. F. LAW,
Solicitors for pet'rs.

Personally appeared Henry Shultz and John W. Yarborough, who being each separately duly sworn, depose and say, that the foregoing petition and application to amend their bill is not made for the purpose of vexation or delay; that the matter of the proposed amendment, as they are advised and believe, is material; that they have so recently discovered the omission, and been advised of its materiality, that the same could not, with reasonable diligence, have been sooner introduced into the bill; that, so far from seeking delay by the amendment proposed, it being introduced into the bill, they will be ready and desirous to argue the demurrers on the day on which they are now set down.

HENRY SHULTZ,
JOHN W. YARBOROUGH.

Sworn to before me, and subscribed, this 13th May, 1846, at Richmond county, in the district of Georgia.

WM. W. HOLT,
U. S. commissioner for the said county and district.

On reading the foregoing petition of John W. Yarborough and Henry Shultz, complainants, for leave to amend their bill filed against the Bank of the State of Georgia, John McKinne, Gazaway B. Lamar, the City Council of Augusta, defendants, it is ordered, that the said complainants have leave to amend their said bill, as prayed for, on or before the next succeeding rule day; and that a copy of said amendment be served on each of the defendants.

JNO. C. NICOLL, *Dist. judge.*

SAVANNAH, *June 1st*, 1846.

Filed May 16th, 1846.

G. GLEN, *Clerk.*

JOHN W. YARBOROUGH, trustee, &c., and Henry Shultz, complainants,
and
THE BANK OF THE STATE OF GEORGIA, John McKinne, G. B. Lamar, and the City Council of Augusta, defts.
} In equity.

6th circuit court, U. States, district of Georgia.

Amendment of the foregoing bill of complaints to come in and form a part of the original bill at the end of the fifth paragraph in page six of the said bill, viz:

And your orators, by leave of the court first had and obtained for the amendments of their said bill, further shew to your honors, that the said mandate of the said Supreme Court of the United States was and is in the words following, to wit: "This cause came on to be heard on the transcript of the record of the circuit court of the United States, for the sixth circuit and district of Georgia, and on the points on which the judges of that court were divided in opinion, and which were certified to this court, and was argued by counsel; on consideration whereof, this court is of opinion, that as the bill does not aver that the corporators of the Bank of the State of Georgia, which bank is defendant in the suit, are citizens of the State of Georgia, the circuit court has no jurisdiction of the cause, and can grant no relief.

It is therefore ordered to be certified to the said circuit court, as the opinion of this court, that in the present state of pleadings it not appearing that the defendants are citizens of the State of Georgia, the complainants are not entitled to relief in that court.

And whereas, at January term 1830, by consent of parties, the said cause was reinstated on the calendar of this court, and the bill amended by averring the citizenship of the several defendants, which said amendment, as appears by the transcript of the record, whereupon the same was made, reference being had thereto, is as follows, to wit, and the said complainants aver, that the president, directors, and stockholders,

of the Bank of the State of Georgia are citizens of the State of Georgia, and that John McKinne, Barna McKinne, Anselim Brigg, Walton Knight, Joseph Rogers, George Bleen Brewer, and Aspinwall and Robert Latton, are also citizens of the said State of Georgia.

And afterwards, to wit, at the same term of the court aforesaid, the said cause came on to be heard, and the following decree was entered, to wit:

This cause came on to be heard on the transcript of the record from the circuit court of the United States, for the district of Georgia, and on the certificate of division of the judges thereof, on consideration whereof, this court is of opinion that the whole cause, and not a point or points in the cause, has been adjourned to this court. Whereupon it is ordered and adjudged by this court, that this cause be, and the same is hereby remanded to the said circuit court, with directions to proceed therein according to law.

The following amendment will come in at the end of the second paragraph of page 11, of the original bill:

And your orators further shew to your honors, that they are advised and believe, and therefore insist, that the final decree of this honorable court on said original bill is void as to all the parties to the said bill, and as to all persons whatever, because the said Supreme Court of the United States had no jurisdiction of the said cause in the term of January, 1830, when the decree referred to in the said mandate purports to have been made, the same having been already remanded to this honorable court by the order made by the said Supreme Court in January term, 1828, directing its opinion to be certified to this honorable court on the points in the said cause on which the judges thereof were divided.

WM. Y. HANSELL,
WM. & WM. F. LAW,
Complt's solicitors.

Filed June 10, 1846.

G. GLEN, *clerk.*

JOHN W. YARBOROUGH and Henry Shultz, compl'ts,
and
THE BANK OF THE STATE OF GEORGIA, John McKinne, Gazaway B. Lamar, and the City Council of Augusta, defts.
} In equity.

In the sixth circuit court of the U. S., district of Georgia.

To Messrs. McAllister & Cohen, Petigru & Lesesne, Andrew J. Miller, and Thomas E. Lloyd, esquires, solicitors for the defendants.

GENTLEMEN: Be pleased to take notice, that we shall apply to their honors the judges of the sixth circuit court of the United States, for the district of Georgia, by petition now filed, on or before the rules day in June next, for leave to amend the bill in the above case, by introducing into said bill the proceedings of the Supreme Court of the United States, at January term, 1828, in the case of Breithaupt & Shultz vs. The

Bank of the State of Georgia and others, with proper charges and allegations.

Respectfully,
WM. & WM. F. LAW,
Complt's Solicitors.

Savannah, 11th May, 1846.

Mr. Shultz will be pleased to have a copy of this notice made and served on Mr. Andrew J. Miller, of Augusta. Let the person serving it make a short affidavit that he has served a true copy of this on Mr. Miller, and return this paper to us with the affidavit on it.

W. & W. F. LAW.

I have received a copy of the within notice by the hands of Caleb H. Lindsey.

A. J. MILLER,
Sol. for the City Council of A.

Augusta, May 13th, 1846.

Service of the within notice acknowledged this 18th May, 1846.

THOS. E. LLOYD,
Sol. pro G. B. Lamar.

Filed July 9, 1846.

G. GLEN, *Clerk.*

SHULTZ
vs.
THE BANK.

CHARLESTON, 12*th May*, 1846.

GENTLEMEN: We acknowledge with pleasure your notice of the 11th instant by mail, of the intention to file a petition to amend the bill, and the nature of the proposed amendment. We refer with entire confidence to Mr. McAllister the subject of the petition, and will be well satisfied with his decision.

Very respectfully, your obedient servants,
PETIGRU & LESESNE.

To Messrs. W. & W. F. LAW.

Filed July 9th, 1846.

G. GLEN, *Clerk.*

JOHN W. YARBOROUGH AND HENRY SHULTZ
vs.
THE BANK OF THE STATE OF GEORGIA, JOHN McKINNE, GAZAWAY B. LAMAR, AND THE CITY COUNCIL OF AUGUSTA. } In equity.

Sixth circuit court, United States district of Georgia, adjourned April term, 1846.

This cause came on to be heard at this adjourned term, and was argued by counsel; and, thereupon, upon consideration thereof, it was ordered, adjudged, and decreed, as follows, viz: that the demurrers

filed in [the] above case be deemed sufficient, and that the same do stand and be allowed, and that the bill of complainants be dismissed with costs. July 27, 1846.

Filed July 27, 1846.

G. GLEN, *Clerk.*

In the sixth circuit court of the United States, for the district of Georgia, April adjourned term, 1846.

JOHN W. YARBOROUGH, trustee, and HENRY SHULTZ, complainants,
and
THE BANK OF THE STATE OF GEORGIA, JOHN MCKINNE, GAZAWAY B. LAMAR, AND THE CITY COUNCIL OF AUGUSTA. } In equity.

To the honorable the judges of the sixth circuit court aforesaid.

The petition of the complainants filed now, to wit, at the present April adjourned term of the sixth circuit court of the United States, for the district of Georgia, in the year eighteen hundred and forty-six, respectfully shew, that at the said term of this honorable court, a decree has been pronounced and entered in said cause, sustaining the demurrer, and dismissing the bill of your petitioners.

Your petitioners are advised and believe, that they have good grounds of appeal from the said decision and decree, and therefore respectfully they pray an appeal therefrom to the Supreme Court of the United States, to be holden at the Capitol, in the city of Washington, on the first Monday in December next, on such terms as may be prescribed and approved by this honorable court, or one of the judges thereof. And your petitioners further pray this honorable court to order and direct that the pleadings, other proceedings remaining of record, and the decree of this court, be sent up and returned to the Supreme Court of the United States, at the time and place aforesaid, then and there to hear and determine the same. And your petitioners will ever pray.

WILLIAM Y. HANSELL.

WILLIAM & WILLIAM F. LAW,
Complainants' solicitors.

Be it so. Savannah, July 27, 1846.

JAMES M. WAYNE,
JOHN C. NICOLL.

Filed 27th July, 1846.

G. GLEN, *Clerk.*

UNITED STATES OF AMERICA,
District of Georgia, ss:

I, George Glen, clerk of the circuit court of the United States, for the sixth circuit and district of Georgia, hereby certify, that the aforegoing is a true and perfect transcript of the record and proceedings in the

case therein mentioned, taken from, and by me carefully compared with, the original documents of file and of record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of the said court, this eleventh day of September, A. D. 1846, and in the seventy-first year of American independence.

[L. S.]

GEORGE GLEN, *Clerk*.

UNITED STATES OF AMERICA,
Circuit court, sixth circuit:

I, James M. Wayne, presiding judge of the circuit court of the United States, sixth circuit, in and for the district of Georgia, hereby certify, that the attestation of George Glen, clerk of the said court, to the foregoing document is in due form.

Witness my hand, this eleventh day of September, anno domini 1846.

JAMES M. WAYNE.

Filed 1st January, 1847.